

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 * * *

5 BRENDAN NASBY,

Case No. 3:07-cv-00304-LRH-WGC

6 Petitioner,

ORDER

7 v.

8 E.K. MCDANIEL, et al.,

9 Respondents.

10 On February 21, 2019, the Court directed respondents to respond to petitioner's request,
11 embodied in his reply to the answer, for leave to amend his petition. (ECF No. 164). Respondents
12 have opposed the request on the grounds that petitioner has not submitted a proposed amended
13 petition and has unduly delayed in seeking leave to amend. (ECF No. 165). Petitioner responds
14 that it is in the interests of justice to allow counsel to supplement the petition to elaborate on those
15 claims that respondents argue have been insufficiently cited and pled. (ECF No. 171).

16 Under Federal Rule of Civil Procedure 15(a)(2), leave to amend should be freely given
17 "when justice so requires." But leave to amend "is not to be granted automatically," and the Court
18 "considers the following five factors to assess whether to grant leave to amend: (1) bad faith, (2)
19 undue delay, (3) prejudice to the opposing party, (4) futility of amendment; and (5) whether
20 plaintiff has previously amended his complaint." *In re W. States Wholesale Natural Gas Antitrust*
21 *Litig.*, 715 F.3d 716, 738 (9th Cir. 2013) (internal punctuation omitted).

22 Petitioner has not previously amended his petition, there is no indication of bad faith,
23 futility or prejudice to respondents. While there has certainly been delay, in light of the procedural
24 history of the case, the Court concludes that it is in the interests of justice to allow petitioner's
25 counsel to amend the petition to elaborate on existing claims that respondents assert the claims are
26 conclusory, bare, insufficiently pled, or insufficiently cited. As petitioner does not seek leave to
27 include additional claims, no such leave is granted.
28

1 Accordingly, IT IS THEREFORE ORDERED that petitioner is hereby granted leave to
2 amend his petition to elaborate on his existing claims to the extent they are bare, conclusory, or
3 insufficiently pled or cited. Petitioner will have forty-five days from date of entry of this order
4 within which to amend his petition in accordance with this order.

5 IT IS FURTHER ORDERED that respondents will have forty-five days from service of
6 the amended petition to file a second amended answer, and petitioner will have thirty days from
7 service of the second amended answer to file an amended reply.

8 IT IS SO ORDERED.

9 DATED this 23rd day of April, 2019.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE